I agree entirely with what the learned Magistrate has stated in his grounds of decision with the exception of this one sentence:—

"In the case under consideration the offence is not punishable with death or penal servitude for life."

This is the mistake which has caused the learned Magistrate to make the order appealed against. An offence under section 395 of the Penal Code is punishable with penal servitude for life (that is to say, under the law as it now stands, with life imprisonment), and therefore comes within that part of section 416(1) of the Criminal Procedure Code which says that persons accused of a non-bailable offence shall not be released on bail if there appear reasonable grounds for believing that they have been guilty of an offence punishable with death or penal servitude for life. The expression "punishable with death or penal servitude for life" must be read disjunctively and has been held to mean "punishable with death or punishable with penal servitude for life" (see *K. S. Menon*[1], and *Regina v. Ooi Ah Kow*[2]).

In my opinion there is no doubt in law that where an accused is charged with an offence punishable with life imprisonment a Magistrate has no power under section 416(1) to grant bail whether that offence is or is not also punishable with death.

For these reasons I rescinded the order of the learned Magistrate granting bail to all the respondents.

The High Court is not limited in regard to the length of a remand but I thought it might be as well for the accused to appear once more in the Magistrate's Court before the commencement of the enquiry and I therefore remanded them in custody until the 2nd February, 1956 when both cases can be mentioned and possibly consolidated in the Magistrate's Court.

Appeal allowed.

DY. PUBLIC PROSECUTOR v. TARA SINGH

[A. Cr. J. (Whitton J.) February 10, 1956]

[Singapore — Magistrate's Appeal No. 184 of 1955]

Road Traffic Ordinance, 1941, s. 27(1) — Charge of being found in the driver's seat of a taxi whilst under the influence of drink — Intention to drive the vehicle — Onus is on accused to show that he had no intention of driving.

In this case the respondent was acquitted on a charge of being found sitting in the driver's seat of a taxi whilst under the influence of drink. The learned Magistrate found that the respondent was under the influence of drink to such an extent as to be incapable of having proper control of the vehicle and he also found that the respondent was seated at the steering wheel of the taxi and was asleep. Applying the proviso to s. 27(1) he held that so long as the respondent was asleep he could not have any intention of driving the vehicle and that consequently the case was covered by the proviso. The Public Prosecutor appealed.

Held: (1) the proviso to s. 27(1) of the Road Traffic Ordinance places on an accused person under the section the burden of proving that he had no intention of driving the motor vehicle contrary to the proviso of the section and that burden can only be discharged by the defence satisfying the Court that the accused had no intention to drive; (2) the words in the proviso "had no intention" relate to the time the accused was sitting in the driving seat and do not extend to any antecedent period; (3) evidence that a person found in the driving seat was asleep does not prove that such person had no intention of driving: to satisfy the proviso, the accused must adduce some evidence of a positive resolution not to drive before the inference ordinarily to be drawn from occupation of the driver's seat can be said to have been rebutted.

MAGISTRATE'S APPEAL.

J. F. McWilliam (Crown Counsel) for the appellant.

S. H. D. Elias for the respondent.

Whitton J. : — In this case the respondent was acquitted by the Traffic Magistrate on a charge of being found sitting in the driver's seat of a taxi about 3.25 p.m. on 21st July 1955 at the junction of Geylang Road and Kallang Road whilst under the influence of drink, in contravention of section 27 of The Road Traffic Ordinance, 1941.

The Magistrate found that the respondent was under the influence of drink to such an extent as to be incapable of having proper control of a vehicle, and I think the medical and police evidence amply justified this conclusion. He also found that the respondent was seated at the steering wheel of the taxi and was asleep, and there was ground for his so finding. Applying the proviso to section 27(1) to this fact he formed the view that so long as the respondent was asleep he could not have had any intention of driving the vehicle, and that consequently his case was covered by the proviso. Accordingly he acquitted the respondent.

I consider it is clear the learned Magistrate failed to comprehend the nature of the proviso. It places on a person accused under the section the burden of proving that he had no intention of driving the motor vehicle contrary to the provisions of the section, and I conceive that burden can only be discharged by the defence satisfying the Court it is probable the accused had no intention of driving, since I believe that there is no authority for suggesting that the burden is even of a lesser degree than one of establishing that the balance of probability is that his story is true in those cases where an obligation of proof is placed by statute on an accused person. It was submitted by Mr. Elias for the respondent and conceded by Mr. McWilliam for the Crown, correctly I think, that the words in the proviso "had no intention" relate to the time that the

accused was found sitting in the driving seat and do not extend to any antecedent period. But evidence that a person found in the driving seat was asleep does not prove such person had no intention of driving, even though it well may have a bearing on the existence or otherwise of such intention. It seems to me that, while the operative words admittedly appear to require the proof of a negative there must nevertheless, to satisfy the proviso, be adduced some evidence of a positive resolution not to drive before the inference ordinarily to be drawn from occupation of the driver's seat can be said to have been rebutted.

The respondent did in fact give evidence himself tending to establish that he had formed prior to being found by the Police an intention not to drive any more. The learned Magistrate as a result of the view he took of the law failed to express any opinion on the truth or otherwise of this important portion of the evidence, and in the absence of a finding on the point the trial cannot be regarded as having been satisfactory. The appeal must be allowed.

I think the fairest course in the circumstances is to order a new trial on the same charge before another Magistrate, and I direct accordingly.

New trial ordered.

Solicitors: *Elias Bros.*

MOHAMED HANIFAH v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) February 7, 1956]

[K. L. — Criminal Appeal No. 82 of 1955]

Penal Code, s. 193 — Giving false evidence — Evidence Ordinance, 1950, s. 76 — Certified copy of Notes of Evidence — Not dated — Whether admissible.

A certified copy of the notes of evidence which is not dated will not be admitted in evidence in a case under s. 193 of the Penal Code.

The date is an essential requirement of the certificate and there are obvious reasons why this is so as is apparent from other provisions of the Evidence Ordinance. The words of s. 76 of the Evidence Ordinance are too clear to admit of any gloss upon them. A certified copy raises certain presumptions under s. 79; under subsection (1) of this section the Court shall presume that any officer by whom such document purports to be certified held, when he signed it, the official character which he claims in such document. It is obvious therefore that the date is essential for the purpose of establishing whether on a particular date the officer held the official character which he claims.

Observations on certified copies.

Case referred to:—

(1) *In re Tan Ah Chuan & Anor.* (1954) M.L.J. 135.

MAGISTRATE'S CRIMINAL APPEAL.

A. K. Sen for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Buhagiar J. : — The appellant was charged with an offence punishable under section 193 of the Penal Code in the Sessions Court at Kuala Lumpur. He was found guilty, convicted and sentenced to three months' imprisonment.

The prosecution alleged that the appellant had made a statement to a Police Officer in the course of a Police investigation and in the course of the preliminary inquiry the appellant in giving evidence denied that he had made any statement to a Police Officer. The prosecution produced a certified copy of the notes of evidence taken, recorded by the Magistrate at the preliminary inquiry — Ex. P2.

The appellant appealed against conviction on the ground that the learned President erred in admitting as evidence the said certified copy which was not properly certified under section 76 of the Evidence Ordinance, 1950.

Now Ex. P2 consists of notes of evidence of five witnesses with a covering note with a certificate as follows:—

"Certified herein true copy of the record
Abdul Rani
Magistrate, Kuala Lumpur."

There is also the seal of the Magistrates' Court — Kuala Lumpur. The certificate is not dated. This Exhibit purported to be a certified copy of a public document under section 76 of the Evidence Ordinance, 1950. There is no question that if a public document is certified to be a true copy in accordance with the provisions of that section, such certified copy is admissible in evidence and, under section 77, may be produced in proof of the contents of the public document. Section 76 provides that the certificate "shall be dated and subscribed by such officer with his name and his official title."

Before the learned President objection was raised to the admissibility of this exhibit on the ground, *inter alia*, that the certificate was not dated; and counsel for the defendant relied on *In re Tan Ah Chuan & Anor.*[1]. The learned President, however, took the view that the point raised by the defence in that case was not the substantial point under consideration and he treated the opinion of Spenser Wilkinson J. on this point as *obiter dictum*. The learned President ruled that the omission of the Magistrate when certifying the document, although no doubt an irregularity, did not, in his view, vitiate the validity of the document as certified copy admissible in evidence to prove the contents of the document of which it